

**51. IMPASSE [See also 72.586, 72.663, 73.45, and 73.474.]**

**51.01 Definition**

“Whether a bargaining impasse exists is a matter of judgment. Through case history a test for impasse has been developed: (1) the bargaining history, (2) the good faith of the parties in negotiations, (3) the length of the negotiations (frequent, numerous, exhausting—exploring all grounds for settlement), (4) the importance of the issue or issues as to which there is disagreement (mandatory subject of bargaining) and (5) the contemporaneous understanding of the parties as to the state of negotiations (positions solidified).” **ULPs #25-76, #19-78, and #20-78.**

“The Montana Public Employees Collective Bargaining Act impasse procedures includes both mediation and fact finding. Therefore, another test [of whether or not impasse exists is]: ... Has mediation or fact finding been called? What have been the actions of the fact finder or the mediator?” **ULP #25-76**

“The school closure had the same effect as a lockout. The School Board surely did not meet the requirements for impasse.” **ULP #25-76**

“Generally, impasse is said to exist when there are irreconcilable differences in the parties’ positions after exhaustive good-faith negotiations.” **ULP #19-78**

“With the parties not fully exploring all grounds for settlement, with the School District acting in bad faith by imposing conditions on future negotiations, with the positions of the parties not fixed and with the mediator trying to continue mediation. I [the Hearing Examiner] do not believe impasse existed in late August.” **ULP #20-78**

The Hearing Examiner explored the meaning of disputed contract language related to the determination of impasse situations. **ULP #18-81**

“In Montana, five factors have been utilized to determine whether impasse exists. They were originally laid down by the NLRB in **NLRB v. Taft Broadcasting, 64 LRRM 1387** and adopted by BOPA in **ULP 20-78....**” **ULP #7-89.**

“Impasse has been defined as a situation where the negotiators could reasonably conclude ‘that there was no realistic prospect that continuation of discussion, at that time, would have been fruitful’, **NLRB vs. Independent Association of Steel Fabricators, 582 F.2d 135, (1978)**. Whether there is impasse is a matter of judgment.” **ULP #7-89.**

**51.1: Declaration of Impasse**

“Given the state of negotiations there is little evidence to demonstrate that additional meetings would lead to a softening by either party. The proposals of the County were reasonably comprehended by the Unions and impasse was reached.” **ULP #7-89.**